

Application No.: 10/822,200
Amendment and Response filed on September 13, 2005
Reply to Office Action of July 13, 2005
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REMARKS

Reconsideration of the application as amended is respectfully requested.

Status of the Claims

Claims 29-44 are presently pending. Claims 1-28 have been previously cancelled.

Discussion of the Amendments to the Claims

The claims have been amended to point out more particularly and to claim more distinctly the subject matter of the present invention. In particular, independent claims 29 and 41 have been amended to recite that the internodal distance of each of the tubular structures is different. Moreover, dependent claims 30 and 42 have been amended to recite that the first internodal distance is greater than the second internodal distance. Support for the amendments to the claims can be found, for example, at page 8, lines 10-16, of the subject application.

The amendments to the claims do not warrant additional searching because stating that the ePTFE tubular structures of the subject grafts have different porosities is merely another way of saying that the ePTFE tubular structures of the subject grafts have different internodal distances. No new matter has been added by way of the amendments to the claims.

Discussion of the Rejection Under 35 U.S.C. § 103(a)

Claims 29-44 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,619,641 to Schanzer (hereinafter "Schanzer") in view of U.S. Patent No. 6,521,284 to Parsons et al. (hereinafter "Parsons"). In particular, the Examiner continues to allege that Schanzer discloses a first tubular structure having a first "thickness/porosity" and a second tubular structure having a second "thickness/porosity" wherein a resealable layer made of silicone is interposed between the tubular structures. (Office Action, page 3). Moreover, the Examiner on page 3 of the Office Action continues to allege that Schanzer "does not disclose the

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use of ePTFE or adherence [sic] or a flowable material,” notwithstanding the Examiner’s contradictory acknowledgement on page 4 of the Office Action that “pores and porosity exist in the invention of Schanzer due to the nature of the ePTFE.” (Office Action, page 4) (emphasis added). After contending that Parsons teaches grafts with self-sealing properties, the Examiner concludes that it would have been obvious to substitute the ePTFE of Parsons for the PTFE material of Schanzer.

In further support of the obviousness rejection, the Examiner alleges that “the term porosity according the [sic] American Heritage Dictionary is the ratio of the volume of interstices of the material to the volume of its mass.” (Office Action, page 4). Moreover, the Examiner, citing Figures 1 and 2 of Schanzer, alleges that because different thicknesses are disclosed, “different volumes of mass of the material are present.” (Office Action, page 4). In particular, the Examiner reasons that the tubes in Schanzer will have varying porosities “because it is disclosed that one tube can be thicker or have more mass than the other tube.” (Office Action, page 4). The rejection under 35 U.S.C. §103(a) is respectfully traversed for the reasons set forth below.

Contrary to the Examiner’s contention, the American Heritage Dictionary does not define porosity in the manner alleged by the Examiner. Rather, the American Heritage Dictionary defines porosity as “[t]he ratio of the volume of all the pores in a material to the volume of the whole.” *See* THE AMERICAN HERITAGE DICTIONARY (3rd Ed. 1993). In any event, one of ordinary skill in the art having knowledge of ePTFE grafts would understand that the porosity of an ePTFE graft depends upon internodal distance. Indeed, the subject application explains how “[t]he porosity of an ePTFE vascular graft can be controlled by controlling the IND” (*see* page 1, line 30). In particular, one of ordinary skill in the art would appreciate that a graft having a larger IND is more porous relative to a graft having a smaller IND, as explained in the subject application (*see* page 1, lines 25-26).

Applicants thus maintain their position that there is no disclosure, teaching or suggestion in Schanzer of a multi-layered ePTFE graft having a first ePTFE tubular structure, a second

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ePTFE tubular structure, and a self-sealing material interposed in between, wherein the porosity of each of the tubular structures is different. Indeed, there is no disclosure, teaching or suggestion in Figures 1 and 2 of Schanzer of such a graft. As noted in the Amendment and Response to Office Action filed on April 26, 2005, one of ordinary skill in the art would appreciate that thickness and porosity are distinct properties and that one is not indicative of the other. Accordingly, the fact that Schanzer discloses the wall thickness of each of the tubes of the graft disclosed therein is of no import with regard to the case at hand. However, in an effort to advance prosecution and not in acquiescence of any rejection, the claims have been amended herein to clarify the claimed subject matter.

In view of the amendments to independent claim 29 and independent claim 41, claims 29-44 are now all directed to a multi-layered ePTFE graft having a first ePTFE tubular structure, a second ePTFE tubular structure, and a self-sealing material interposed in between, wherein the internodal distance of each of the tubular structures is different. Schanzer, however, certainly does not disclose, teach or suggest the same.

Moreover, Parsons fails to remedy the deficiencies of Schanzer. Notwithstanding the Examiner's comments on page 3 of the Office Action with regard to exchanging the ePTFE of Parsons for the PTFE of Schanzer, the Examiner indicates that Schanzer is cited merely for its disclosure with regard to self-sealing properties.¹ In any event, there is no disclosure, teaching or suggestion in Parsons of a multi-layered ePTFE graft having a first ePTFE tubular structure, a second ePTFE tubular structure, and a self-sealing material interposed in between, wherein the porosity of each of the tubular structures is different.

In view of the foregoing, Applicants respectfully submit that claims 29-44 are not obvious in view of the combination of Schanzer and Parsons. Accordingly, Applicants

¹ The Examiner contends on page 5 of the Office Action that Parsons is merely utilized "to teach the self sealing properties and not for the purposed [sic] addressed by applicant." However, given the comments on page 3 of the present Office Action and on page 3 of the Office Action mailed on January 26, 2005, the Examiner does indeed appear to be relying on Parsons for its disclosure with regard to ePTFE. With that said, as discussed herein, Parsons does not disclose, teach or suggest the subject invention.

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respectfully request the withdrawal of the rejection under 35 U.S.C. § 103(a).

Other Remarks


The Examiner has indicated that U.S. Patent No. 6,890,351 (to Termin et al.) and U.S. Patent No. 6,517,571 to Brauker et al. are considered pertinent to Applicants' disclosure. Neither of these references, however, disclose, teach or suggest the subject invention as defined by the pending claims.

Concluding Remarks

The claims are believed to be allowable over the art and the application in good and proper form for allowance. The Examiner is invited to contact the undersigned if he has any questions regarding this submission or, if in his opinion, a teleconference call would expedite prosecution of the subject application.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17, and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

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